

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 20424 of 2001

Between:

HUSSAINY EDUCATIONAL SOCIETY Syed Hamza Hussainy, Chairman/
Correspondent, Nellore.

..... PETITIONER

AND

- 1 Government of A.P. Secretary to Govt.
Higher Educational Department, Secretariat,
Hyderabad
- 2 A.P. State Council of Higher Education Secretary
Saifabad, Hyderabad
- 3 Board of Intermediate Education Secretary
A.P., Hyderabad.
- 4 Sri Datta Sai Educational society
Dattalur (M), Nellore Dist.
- 5 Sri Karanam Ramachandra Rao Hon'ble Minister for Higher Education
Government of A.P., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ or writs, Order or direction declaring G.O. Ms. No.81, Higher Education (CE.III) dt: 20-8-2001 on the file of the 1st respondent, in so far as Duttalur (M) of Nellore Dist. is concerned, as illegal, arbitrary and without jurisdiction and consequently direct the Respondents to forthwith grant permission to the petitioner society for starting a Private Junior College in Venkatampet Village of Duttalur Mandal in Nellore Dist. under the Incentive Scheme of Government, for the year 2001-2002; award costs.

Counsel for the Petitioner : MR. N.SRIDHAR REDDY

Counsel for the Respondent Nos.1 & 5 : G.P. for Higher Education.

Counsel for the Respondent No.2 : Mr. K.Ramesh Babu

Counsel for the Respondent No.3 : Mr. Sudesh Anand

Counsel for the Respondent No.4 : Mr. M.S.Ramachandra Rao

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.20424 OF 2001

ORDER :

The Government formulated a scheme of granting certain incentives for setting up new Junior Colleges in Tribal and Rural Mandals in addition where no Junior Colleges are existing. In pursuance thereof, the Government identified 234 mandals where no Junior Colleges are existing for implementation of the scheme and issued orders for implementation of the scheme with certain conditions and guidelines. Thereafter, the Board of Intermediate Education issued a notification dated 27-5-2001 inviting applications from the Societies / Trusts for starting private junior colleges for the academic year 2001-02 in the said identified Mandals. Having considered the applications received in response to the said notification, the Government issued G.O.Ms.No.81, Higher Education (CE-III) Department, dated 20-08-2001 according permission for establishing private Junior Colleges in 90 mandals under the incentive scheme as shown in the Annexure to the said order during the academic year 2001-02 subject to fulfillment of other terms & conditions stipulated by the Government / Board from time to time. So far as Duttalur Mandal in Nellore District is concerned, the fourth respondent herein has been accorded permission for opening the junior college. Aggrieved by the said permission granted in favour of the fourth respondent for establishing the Junior College in Duttalur Mandal, this writ petition is filed.

The petitioner claims to be a registered society and running a College of Education

in Venkatampet Village of Duttalur Mandal in Nellore District. It is stated that the petitioner Society is also running a Higher Secondary School in the said village from the year 2001. In pursuance of the notification dated 27-5-2001 issued by the Board of Intermediate Education, A.P., Hyderabad under the incentive scheme, the petitioner also made an application for grant of permission to start a Junior College in Duttalur Mandal. The petitioner states that for the said purpose they have already purchased 2.5 acres of land and constructed permanent building with fully equipped infrastructure such as Library & Laboratory and they have also appointed the Lecturers. In pursuance of their application a 3-Men committee headed by the Regional Inspecting Officer, Tirupati inspected the premises on 16-06-2001 and they were satisfied with the infrastructural facilities provided by the petitioner. It is alleged that the fourth respondent is a society registered only on 04-06-2001 and it does not have any experience in running the educational institutions. That apart, the land proposed by the fourth respondent for locating the Junior College is a leased land with temporary structures in an area of one acre. Thus, according to the petitioner, there is absolutely no justifiable reason in preferring the fourth respondent for grant of permission overlooking the application of the petitioner society since it is more meritorious in all aspects. It is alleged that the permission was granted in favour of the fourth respondent at the instance of the fifth respondent who was the Minister for Higher Education in the State Cabinet at the relevant point of time. It is also contended that as per the guidelines issued under G.O.Ms.No.35, dated 24-05-2001 for implementation of the scheme, if applications are received from more than one society for starting the junior college in a Mandal the applicant who has fulfilled most of the following conditions has to be selected.

- a. *Management with pucca and owned building.*
- b. *Management already running educational institutions like Schools, Degree Colleges, etc.*
- c. *Management equipped with Library, Furniture, etc., and*
- d. *Management with own play ground facility.*

The petitioner states that since only two applications are received so far as Duttalur Mandal is concerned i.e., the applications of the petitioner and the fourth respondent and since the petitioner has fulfilled most of the conditions as specified

in G.O.Ms.No.35, dated 24-05-2001 the action of the respondents in ignoring the request of the petitioner and granting permission in favour of the fourth respondent under the impugned G.O.Ms.No.81, dated 20-08-2001 is arbitrary and illegal.

The further contention raised is that the impugned G.O.Ms.No.81, dated 20-08-2001 issued by the first respondent is without jurisdiction and liable to be set aside on that ground alone.

In the counter-affidavit filed on behalf of the first respondent, it is stated that the fourth respondent was accorded permission only after receiving recommendations from the screening committee consisting of the Chairman, A.P. State Council of Higher Education (2) Commissionerate of Collegiate Education (3) Commissioner of Intermediate Education (4) Regional Joint Director of Intermediate Education and (5) Representative of Finance Department. Though it is admitted that only two applications have been received for Duttalur Mandal, the allegation that the permission was granted in favour of the fourth respondent at the instance of the fifth respondent in violation of Rules and Guidelines has been specifically denied and it is stated that the permission was granted on the recommendation of the screening committee after receiving feasibility reports which were reviewed by the screening committee as to the eligibility of the fourth respondent society. That apart, it is alleged that the petitioner's society has shown the land and building which were already hosting B.Ed. College and Upper Primary School. All the rooms are used for accommodating B.Ed. College and Upper Primary School, and only two or three rooms are vacant which are insufficient to run a Junior College. It is further stated that the fourth respondent has provided land to an extent of 2 acres exclusively for establishing incentive junior college at Duttalur Mandal Head Quarters. Therefore, on the recommendations of the 3-Men Committee, the 1st respondent has rightly accorded permission to the fourth respondent.

The 3rd and 4th respondents filed separate counter-affidavits on the same lines. The 4th respondent in its counter-affidavit specifically denied the allegation that the fourth respondent society does not possess the requisite infrastructural facilities. While furnishing the details of the land and the structures provided by the fourth

respondent as well as the amount provided towards the corpus fund, it is further stated that the location of the college by the fourth respondent at Udayagiri is more suited for setting up of the new college in Duttalur Mandal. It is also stated that in pursuance of the permission granted, they have already admitted the students and the classes have been commenced from 08-09-2001 and absolutely no case is made out warranting interference of this Court on any ground whatsoever.

I have heard the learned Counsel for the petitioner, the learned Government Pleader for Higher Education as well as the learned Counsel appearing for the 4th respondent.

The learned Counsel for the petitioner at the outset submitted that as per the provisions of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for short, 'the Rules') so far as the Junior Colleges are concerned, the A.P. Commissionerate of Higher Education alone is competent to grant permission for establishment of the institutions and therefore the impugned order passed by the 1st respondent Government granting permission in favour of the 4th respondent is without jurisdiction.

It is relevant to note that the A.P. Commissionerate of Higher Education was constituted under Section 3 of the A.P. Commissionerate of Higher Education Act, 1986. As per Rule-3 of the Rules made under G.O.Ms.No.29, dated 5-2-1987, it is true that the Commissionerate shall be competent authority for granting or withdrawing the permission for establishment of Junior Colleges. However, the said Act was held to be beyond the legislative competence of the State Legislature in the decision rendered in OSMANIA UNIVERSITY TEACHERS ASSOCN. VS. STATE OF A.P.. In the said case, the Apex Court declared that the A.P. Commissionerate of Higher Education Act, 1986 is void and inoperative. Consequently the Commissionerate constituted under Section 3 of the said Act was not existing as on the date of the impugned order. In the circumstances, by virtue of Section 18 of the A.P. Education Act, 1982, the State Government alone is competent to grant permission for establishment of the educational institutions including the Junior Colleges. The said issue was made clear by a Full Bench of this Court in SOCIETY

OF ST. ANN'S vs. SECRETARY TO GOVT. (EDN.) wherein it was held as under :

“... for the purpose of achieving the legislative object of reforming, organising and developing the educational system in the State, the Government has been vested with the power under Section 18 to either itself establish and maintain educational institutions and/or permit any local authority or a private body of persons including a religious or linguistic minority to establish and maintain educational institutions, according to such specifications as may be prescribed by it. Therefore, it is for the State Government to permit or not to permit a private body of persons including a religious or linguistic minority to establish an educational institution.”

In the circumstances, the contention of the learned Counsel for the petitioner that the impugned order is without jurisdiction cannot be accepted.

Then, coming to the merits of the case, it is to be noted that the impugned order was admittedly based on the recommendations of a three Men Scrutiny Committee. The record shows that the Scrutiny Committee found that the fourth respondent has satisfied the required conditions as specified in G.O.Ms.No.35, dated 24-5-2001. The petitioner is only a rival applicant. Obviously, having considered the relative merits, the Screening Committee has preferred the 4th respondent and accordingly recommended grant of permission in favour of the fourth respondent. The law is well settled that this Court while exercising jurisdiction under Article 226 of the Constitution of India cannot re-appreciate the relative merits of the rival applicants and substitute its own decision regarding the sufficiency or compliance with the requirements. This Court will never sit in Appeal against the opinion of such an expert body and interfere with the determination made by the competent authority unless such decision is mala fide or prompted by extraneous considerations or made in contravention of any Constitutional provision. Though the petitioner attributed mala fides to the Minister for Higher Education in the State Cabinet at the relevant point of time and made him a party-respondent to the writ petition, it is conceded that the 5th respondent died during the pendency of this writ petition. Though no counter-affidavit was filed during his lifetime, in the absence of any material to substantiate the allegations against the 5th respondent who is no more, I am not inclined to hold that the impugned order is vitiated by mala fides. Nothing has been placed before this Court nor the record discloses any material to establish that

the impugned decision was prompted by extraneous considerations.

On a careful consideration of the entire material on record, I do not find any justifiable reason to hold that the impugned order in having granted permission in favour of the 4th respondent is arbitrary or illegal or unreasonable warranting interference by this Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

The Writ Petition is devoid of merit and accordingly the same is dismissed. No costs.

1st July, 2005.

gbs

To

- 1 The Secretary to Government, Government of A.P., Higher Educational Department, Secretariat, Hyderabad
- 2 The Secretary, A.P. State Council of Higher Education, Saifabad, Hyderabad
- 3 The Secretary, Board of Intermediate Education, A.P., Hyderabad.
- 4 Sri Datta Sai Educational society Dattalur (M), Nellore Dist.
- 5 The Hon'ble Minister for Higher Education, Government of A.P., Hyderabad.

6 Two CCs to the Government Pleader for Higher Education,
High Court Buildings, Hyderabad. (OUT)

7 Two C.D. Copies.